

# SENATE RECORD VOTE ANALYSIS

104th Congress  
1st Session

Vote No. 307

July 14, 1995, 12:23 p.m.  
Page S-9970 Temp. Record

## REGULATORY REFORM/OSHA and MSHA Exemption

**SUBJECT:** Comprehensive Regulatory Reform Act of 1995 . . . S. 343. Kassebaum motion to table the Kennedy amendment No. 1543 to the Dole/Johnston substitute amendment No. 1487.

### ACTION: MOTION TO TABLE AGREED TO, 58-39

**SYNOPSIS:** As reported, S. 343 will make changes to reform the regulatory process. The Dole/Johnston substitute amendment would modify the bill in accordance with suggestions made by Senate Democrats, the Administration, and the American Bar Association. The amendment would: recodify and modify the Administrative Procedures Act (APA); impose judicially reviewable obligations on Federal agencies to craft rules in which the benefits justify the costs and to use peer reviewed, standardized risk assessments; expand the Regulatory Flexibility Act; reform the Delaney Clause; and strengthen congressional oversight.

**The Kennedy amendment** would exempt the Mine Safety and Health Administration (MHSA) and the Occupational Safety and Health Administration (OSHA) regulations from the cost-benefit and risk assessment provisions of this Act. For a MSHA or OSHA proposed regulation, the promulgating agency would instead prepare the following: 1) an estimate of the risks addressed and the costs of addressing them; 2) a comparative analysis of the risks addressed relative to other risks to which employees are exposed; and 3) either a certification that a scientific analysis, based on the best scientific data, had concluded that the benefits of the rule justified its costs, or an explanation of why such certification could not be given. An agency's analysis would not be actionable.

Debate was limited by unanimous consent. Following debate, Senator Kassebaum moved to table the Kennedy amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

**Those favoring** the motion to table contended:

Good science is not an enemy of health and safety. Requiring OSHA and the MSHA to assess risks, to compare risks, and to perform cost-benefit analyses of their proposed rules, and to then be ready to defend their assessments in court will not result in less safe workplaces; it will result in greater safety. Listening to our colleagues, though, one might well gain the impression that the effect

(See other side)

YEAS (58)			NAYS (39)			NOT VOTING (3)	
Republicans (51 or 96%)		Democrats (7 or 16%)	Republicans (2 or 4%)		Democrats (37 or 84%)	Republicans (1)	Democrats (2)
Abraham	Hatfield	Baucus	Jeffords	Akaka	Kerrey	Lugar <sup>-2</sup>	Bingaman <sup>-2</sup>
Ashcroft	Helms	Breaux	Specter	Biden	Kerry		Glenn <sup>-2</sup>
Bennett	Hutchison	Ford		Boxer	Kohl		
Bond	Inhofe	Heflin		Bradley	Lautenberg		
Brown	Kassebaum	Hollings		Bryan	Leahy		
Burns	Kempthorne	Johnston		Bumpers	Levin		
Campbell	Kyl	Nunn		Byrd	Lieberman		
Chafee	Lott			Conrad	Mikulski		
Coats	Mack			Daschle	Moseley-Braun		
Cochran	McCain			Dodd	Moynihan		
Cohen	McConnell			Dorgan	Murray		
Coverdell	Murkowski			Exon	Pell		
Craig	Nickles			Feingold	Pryor		
D'Amato	Packwood			Feinstein	Reid		
DeWine	Pressler			Graham	Robb		
Dole	Roth			Harkin	Rockefeller		
Domenici	Santorum			Inouye	Sarbanes		
Faircloth	Shelby			Kennedy	Simon		
Frist	Simpson				Wellstone		
Gorton	Smith						
Gramm	Snowe						
Grams	Stevens						
Grassley	Thomas						
Gregg	Thompson						
Hatch	Thurmond						
	Warner						

#### EXPLANATION OF ABSENCE:

1—Official Business  
2—Necessarily Absent  
3—Illness  
4—Other

#### SYMBOLS:

AY—Announced Yea  
AN—Announced Nay  
PY—Paired Yea  
PN—Paired Nay

of the Dole-Johnston substitute amendment would be to make these agencies assign a dollar value to human life and then make them abandon rules that did not save enough lives. This rhetoric is totally false and offensive.

We do not accuse our colleagues of deliberately misstating how the Dole-Johnston substitute amendment would work in practice, but after days of debate it is unfortunate that they still are not accurately describing its effects. The Dole/Johnston amendment would improve the rulemaking process by making agencies consider the costs of their proposed regulations, consider alternatives, and consider other risks that could be regulated at less cost for greater benefits. It would not make them assign a dollar value to human life, nor forbid them from considering other nonquantifiable variables. All it would require them to do is base their actions on the best science available. The result obviously would be more effective and less burdensome regulations than result when agencies act in relative ignorance, as they do now.

On its merits, the Kennedy amendment is unsupportable. The regulatory abuses of OSHA are legion, and are in fact one of the reasons this bill is even necessary. Agencies already have the capability of using sound science to evaluate their proposed rules. OSHA, if it were so inclined, could use cost-benefit analyses and risk assessments to determine if its rules were burdensome. That it does not is proven by the hundreds of horror stories that we have heard from our constituents about OSHA. OSHA, to put it succinctly, believes every business is its enemy. It sends inspectors to businesses with the goal of writing as many citations as possible. Those inspectors are able to write an awful lot of citations, because OSHA has passed thousands of regulations in minute, niggling detail, and it enforces those regulations to the letter.

Our colleague from Massachusetts has argued against making OSHA weigh its proposed rules using the cost-benefit analyses and risk assessment procedures of the Dole/Johnston substitute because he says it would introduce a long delay in the promulgation of regulations needed immediately to protect worker safety. However, he has simultaneously informed us that it commonly takes OSHA 5 or more years to promulgate a rule, and in one case it took over 17 years. At the end of 17 years, does the need for the rule suddenly become critical? Further, OSHA could show a little common sense and not wait to do its cost-benefit and risk assessments at the very end of its 17-year development of a rule. Further, even if for some reason OSHA, unlike any other agency could not timely complete the required analyses within a several-year timespan, it could still promulgate a rule under the safety exemption in the bill. As we have discussed at length on previous amendments, nothing in this Act will delay the promulgation of any health or safety rule or any emergency rule that needs to be put in force before the required assessments are completed. The Kennedy amendment, in sum, is both unneeded and unwise. We therefore urge our colleagues to join us in tabling it.

**Those opposing the motion to table contended:**

If it ain't broke don't fix it. The MSHA and OSHA have had tremendous success in improving worker safety in their respective fields. For mining, since the enactment of the Mine Safety Health Act in 1968, annual coal mining deaths have dropped from 250 to 50, the incidence of black lung disease has fallen by two-thirds, and mine productivity has increased by 80 percent. Both miners and reputable mining companies recognize the huge benefits that have come to their industry from the sensible regulations imposed over the past 25 years by the MSHA.

OSHA has enjoyed similar success. Since the creation of OSHA in 1970, the fatality rate from on-the-job accidents has declined dramatically. While some of this drop may be attributable to a changing workforce composition, with more workers employed in less dangerous occupations, certainly not all of it can be. Further, those commentators who suggest that the drop in the accident rate was just part of a trend that would have continued with or without the passage of OSHA should be aware that workplace fatalities in the 23 years before the enactment of OSHA declined only 43 percent, while in the 23 years after enactment they declined 57 percent. Many of the deaths that still occur are due to homicides, which are beyond the ability of OSHA to regulate.

The Dole/Johnston substitute amendment would pose unique problems for both these agencies. OSHA has never been renowned for the speed with which it promulgates a regulation once a need has been identified. In one case, it took it 17 years (to develop a confined space standard). Adding the detailed requirements for cost-benefit analysis and risk assessment will slow it down even more. For instance, it has estimated that if this rule had been in effect last year, before it promulgated its cadmium standard, it would have taken it at least another 4 years to issue that rule. The MSHA, though it is not as slow as OSHA, would have its own unique problem if it had to follow the rules in this bill--virtually all coal mines in the United States qualify as small businesses, so virtually all MSHA rules regardless of cost would be considered major rules because of their effect on small businesses. For both the MSHA and OSHA the greatest burden would probably be the review procedures of the Dole/Johnston substitute. If companies were given the opportunity to drag these regulatory agencies into court and make them perform extensive reviews of all their rules, they would, if for no other reason than to tie them into knots, thereby preventing effective regulation.

The risks regulated by these two agencies are well understood. We know we need regulations on ladders, slippery floors, lighting, and similar matters in order to protect workers. We know from experience that these agencies' regulations prevent deaths. We do not want to meddle with success. Accordingly, we have proposed the Kennedy amendment, which actually would take a proposal straight from a different bill that has been proposed by Senators Bond and Gregg. That Republican proposal, which we have adopted, is for these two agencies to conduct cost-benefit analyses of their rules and publish them. This moderate proposal is much more reasonable. We therefore urge our colleagues to vote against the motion to table the Kennedy amendment.

**JULY 14, 1995**

**VOTE NO. 307**

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